

TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Monroe D. Kiar, Town Attorney / (954) 584-9770

SUBJECT: Resolution

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE AN EMPLOYMENT AGREEMENT BETWEEN THE TOWN AND TOWN ADMINISTRATOR, GARY P. SHIMUN; AND PROVIDING FOR AN EFFECTIVE DATE.

REPORT IN BRIEF: The Town Council directed the Town Attorney's Office to prepare a Resolution executing an Employment Agreement between the Town Administrator, Gary P. Shimun, and the Town.

PREVIOUS ACTIONS: N/A

CONCURRENCES: N/A

FISCAL IMPACT:

RECOMMENDATION: Resolution and Agreement are suitable for Town Council Review.

ATTACHMENTS: Resolution, Employment Agreement

RESOLUTION _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE AN EMPLOYMENT AGREEMENT BETWEEN THE TOWN AND TOWN ADMINISTRATOR, GARY P. SHIMUN; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 6 of the Town Charter of the Town of Davie, provides for the position of Town Administrator; and

WHEREAS, the Town of Davie has named Gary P. Shimun as Town Administrator; and

WHEREAS, the Town of Davie wishes to enter into an agreement with respect to terms of the appointment and wish to reduce the agreement to writing, a copy of which is attached hereto as Exhibit "A"

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION 1. The Town Council of the Town of Davie hereby authorizes the Mayor to execute the Employment Agreement, a copy of which is attached hereto as Exhibit "A".

SECTION. 2. That Gary P. Shimun is appointed to serve in the position of Town Administrator for the Town of Davie under the terms and conditions set forth in Exhibit "A" attached hereto and made a part hereof.

SECTION 3. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2006.

Mayor/Councilmember

ATTEST:

Town Clerk

Approved this _____ day of _____, 2006.

EMPLOYMENT AGREEMENT

THIS AGREEMENT entered into this ____ day of _____, 2006, by and between the Town of Davie, Florida, a municipal corporation (hereinafter “Davie”) and Gary P. Shimun (hereinafter “Town Administrator”).

WITNESSETH

WHEREAS, the office of the Town Administrator is a unique position created by the Charter of the Town of Davie, with responsibility to supervise the administrative activity of the Town and to provide for the coordination of such activities; and

WHEREAS, Davie desires to employ the services of Gary P. Shimun as Town Administrator of the Town of Davie, to fulfill the responsibilities of the office as specified in the Town Charter; and

WHEREAS, as an inducement to employment, it is the desire of the Town Council to provide certain benefits, to establish certain distinct conditions of employment appropriate to the chief administrator of Davie, and to set working conditions of Town Administrator; and

WHEREAS, Town Administrator desires to accept employment as Town Administrator of the Town of Davie; and

WHEREAS, Davie and Town Administrator wish to formalize the terms of appointment as Town Administrator.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

Section 1. Duties:

Davie hereby agrees to employ Gary P. Shimun as Town Administrator of the Town of Davie to perform the functions and duties specified in Section 6 of the Town Charter and to perform other legally permissible and proper duties and functions as the Council shall from time to time assign. The Town Administrator shall devote his full time professional employment to the Town of Davie and will not accept any outside employment without the express knowledge and consent of the Davie Town Council.

Section 2. Term.

A. The employment of the Town Administrator shall be without definite term and shall continue until reassigned.

B. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of the Council to terminate the services of Town Administrator at any time, subject only to the provisions set forth in Section 3 of this agreement.

C. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of Town Administrator to resign at any time from his position with Davie, subject only to the provisions set forth in Section 4 of this agreement.

Section 3. Termination and Severance Pay.

A. In the event Town Administrator is terminated from the Town's employment without cause by the Council and provided that the Town Administrator is willing and able to perform his duties under this agreement, then in that event, Davie agrees to pay Town Administrator a sum equal to not more than (12) months aggregate salary, benefits and the deferred compensation payable as follows:

- (1) A cash payment equal to six (6) months aggregate salary paid at time of termination;
- (2) Commencing with the first pay period subsequent to termination, an additional severance paid periodically as payroll for a period not to exceed six (6) months.

Medical, dental and pension benefits shall continue until the expiration of twelve (12) months from termination or until Town Administrator is employed by another employer, whichever occurs first. Town Administrator shall also be compensated for all earned sick leave, vacation, holidays, compensatory time, and other accrued benefits to date as provided for herein. In the event Town Administrator is terminated for cause, Davie shall have no obligation to pay the aggregate or periodic severance sum designated in this paragraph, nor continue any of the benefits outlined herein. For purposes of this agreement, "for cause" shall mean conduct which constitutes any felony whatsoever or a misdemeanor directly relating to his power, duties, or privileges as Town Administrator, violation of the Town Charter or any misdemeanor involving moral turpitude.

B. Davie shall have the right to terminate the employment of the Town Administrator without cause for any reason without any prior notice subject only to the provisions of this Agreement.

Section 4. Resignation.

In the event Town Administrator voluntarily resigns his position with Davie, then Town Administrator shall give Davie ninety (90) days notice in advance, unless the parties agree otherwise. The Town Administrator shall be compensated for all earned sick leave, vacation, holidays, compensatory time and other accrued benefits to date.

Section 5. Disability.

If Town Administrator is unable to perform his duties for a period of twelve (12) successive weeks beyond any unused leave, or for ninety (90) working days over a one hundred and twenty (120) working day period, Davie shall have the option to terminate this agreement, subject to the severance pay requirements of Section 3(A). Part or all of the Town's obligation under this provision may be provided at the Town's option through disability insurance, the premium for which shall be paid for by the Town.

Section 6. Salary

Davie agrees to pay Town Administrator for his services rendered pursuant hereto an annual base salary \$162,000.00, payable in installments at the same time that other management employees of Davie are paid. In addition, Davie agrees to increase base salary and/or benefits of Town Administrator in such

amounts and to such extent as the Council may determine that it is desirable to do so on the basis of an annual salary review of said Town Administrator. Cost of living increases shall be credited to base salary as any other executive/management employee.

Section 7. Performance Evaluation.

A. The Council shall review and evaluate the performance of the Town Administrator at least once annually. Said review and evaluation shall be consistent with the stated goals and objectives referred to in paragraph B below.

B. The Council and Town Administrator may annually define goals and performance objectives that they determine necessary for the proper operation of the Town of Davie and in the attainment of the Council's policy objectives and shall further establish a relative priority among those various goals and objectives, said goals and objectives to be reduced in writing. They shall generally be attainable within the time limitations as specified and the annual operating and capital budgets and appropriations provided.

Section 8. Executive Days.

It is recognized that the Town Administrator must devote a great deal of time outside the normal office hours to business in Davie, and to that end, Town Administrator will be allowed to take fifteen (15) executive days each year.

Section 9. Automobile.

Town Administrator's duties require that he shall have the exclusive and unrestricted use at all times during his employment with Davie of an automobile provided to him by Davie. Davie shall be responsible for paying for liability, property damage, and comprehensive insurance, and for the operation, maintenance and repair of said automobile. It is understood that Town of Davie shall not be responsible for providing fuel for any use of said automobile outside of Broward County for personal uses. In the event that Town Administrator wishes not to accept said automobile, the Town shall pay to Town Administrator the sum of \$550.00 per month.

Section 10. Vacation and Sick Leave.

The Town Administrator shall accrue twenty (20) vacation days per year. There shall be no maximum accrual of vacation or sick leave. In the event of voluntary separation or in the event of termination pursuant to Section 3(A) above, there shall be a payout of all accumulated vacation time, sick leave and compensatory time. In the event of involuntary termination without cause, Town Administrator shall be paid 100% accumulated sick leave, vacation and compensatory time, not to include executive days.

Section 11. Disability, Health and Life Insurance.

A. Davie agrees to put into force and to make required premium payments for Town Administrator for a term life insurance policy in the amount of \$250,000.00 to the named beneficiary at non-smoker rate.

B. Davie agrees to provide medical, dental and disability insurance for Town Administrator and his dependents in the same manner as currently being offered to general Town employees.

Section 12. Pension.

Davie shall provide the rights and privileges afforded all management employees participating in the Management and General Employees Defined Benefit Pension Plan. Davie and the Town Administrator agree to discuss other potential alternatives at the time of future Town Administrator evaluations.

Section 13. Dues and Subscriptions.

Davie agrees to budget and pay for, on an annual basis subject to annual review and appropriation, the professional dues and subscriptions of Town Administrator for International City/County Manager Association, Florida City County Managers Association, American Planning Association, Government Finance Officers Association, which are deemed necessary and desirable for his continued professional participation, growth and advancement, and for the good of Davie.

Section 14. Professional Development.

Davie does hereby agree to budget for and to pay the travel and subsistence expenses of Town Administrator for the professional and official travel pursuant to Davie's policy or practice, as the same now exists or may be hereafter modified. Town Administrator shall be allowed at a minimum to attend the Annual ICMA conference, Florida League of Cities state meetings and/or Annual Conference, the annual Florida City Managers Conference, Broward Days and any other events or professional training related to his duties.

Section 15. General Expenses.

Davie recognizes that certain expenses of a non-personal and job related nature are incurred by Town Administrator, and hereby agrees to reimburse or to pay said general expenses upon receipt of duly executed expenses vouchers, receipts, statements or personal affidavits pursuant to Town policy, as the same now exists or may be hereafter modified. The amount of general expenses paid by Davie shall be approved by the Town Council during the annual budget process or at other such times as appropriate that will be submitted by the Town Administrator to the Town Council for action.

Section 16. Indemnification.

Davie shall defend, save harmless, and indemnify Town Administrator to the extent allowed by law against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Town Administrator's official duties as Town Administrator.

Section 17. Bonding.

Town may require bonding of Town Administrator and if so, Davie shall bear the full cost of any fidelity or other bonds required of the Town Administrator under any law or ordinance.

Section 18. Other Terms and Conditions of Employment.

A. All provisions of the Town Charter and Code, and regulations and rules of Davie relating to vacation and sick leave, retirement and pension system contributions, holidays, tuition, and other benefits and working conditions as they now exist or hereafter may be amended, also shall apply to Town Administrator as they would to other employees of Davie, except as herein provided or modified.

Section 19. General Provisions.

A. The text herein shall constitute the entire agreement between the parties and cannot be amended except by written document executed with the same formalities as the original.

B. This agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Town Administrator.

C. This agreement shall become effective commencing _____, 2006.

D. If any provision of, or any portion thereof, contained in this agreement is held unconstitutional, invalid or unenforceable, the remainder of this agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

E. Any claim, objection or dispute arising out of the terms of this agreement shall be litigated in the Seventeenth Judicial Circuit in and for Broward County, Florida.

F. The validity, construct and effect of this agreement shall be governed by the laws of the State of Florida.

IN WITNESS WHEREOF, the Town of Davie has caused this agreement to be signed and executed on its behalf by its Mayor, and duly attested by its Town Clerk, and the Town Administrator has signed and executed this agreement, both in duplicate, the day and year first above written.

TOWN OF DAVIE, a municipal corporation

BY; _____
Thomas Truex, Mayor

Gary P. Shimun

Attest: _____
Russell Muniz, Town Clerk

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